

Reconsideration of the application in light of the above amendments and the following remarks is respectfully requested.

Claims 13-15, 18-23 and 29-31 are pending. Claims 1-12, 16-17, 24-28 and 32 were canceled by previous amendment, without prejudice or disclaimer of the subject matter recited therein. Claims 13 and 29 have been amended. No new matter has been added.

Claims 13 and 29 were objected to because the phrase “at least one of” was followed by a list of items that included two conjunctions (i.e., “and”). Claims 13 and 29 have been amended to remove one of the conjunctions, so that all the listed items are included in the “at least one of” group of candidates. Reconsideration of the objection is respectfully requested

Claims 13-15, 18-23 and 29-31 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,847,613 to Mimura et al. (“Mimura”) in view of U.S. Patent No. 6,847,613 to Goel et al. (“Goel”).

Mimura describes implementing monitoring of communication flows and collecting statistical data of a packet switched network. Mimura describes a packet switch 1 which includes a meter 5 and a MUX control 6. The meter 5 measures predetermined items of incoming IP packets. The meter 5 observes the incoming packets, and acquires and retains

statistical data on the incoming packets. Mimura, column 6, lines 36-45, 59-65; Fig. 1. The statistical data acquired by the meter 5 includes time dependent information (e.g., average numbers of packets passed per unit time, relative time of the communication flow of observed packets begins and terminates, delay time). Mimura, column 7, lines 1-28. Under instruction by the MUX control 6, the statistical data is incorporated into the communication flow and sent as part of the flow. Mimura, column 7, lines 32-35.

Goel describes arrangements and methods for efficiently selecting an optimum connection path in a network environment. Goel, Abstract. Goel describes that routing protocols between network nodes include the exchange of metrics (e.g., available and maximum bandwidth, cell delay variation, and cell transfer delay). Goel, column 1, lines 30-36. Goel describes a path selection algorithm that employs a delay accumulation calculation which relies on reports of mean queuing delay, variance of queuing delay, a discrepancy parameter, and a fixed delay. Goel, column 11, lines 31-61.

Independent claims 13 and 29 of the present application have been amended so as to recite "combining the measured data into an aggregation of characteristic values, wherein the aggregation has a lower volume than the measured data, and includes at least two of a mean one-way delay, a maximum one-way delay, a minimum one-way delay, a standard deviation of a one-way delay, a mean IP delay variation, a maximum IP delay variation, a standard deviation of an IP delay variation, a packet loss, and a packet-throughput over a time interval" and "associating the characteristic values with a time of the combining." Support for this amendment may be found in the Specification, for example at, ¶¶ 0050-53. By combining measured data into an

aggregation before transmitting the values on the network the claimed invention minimizes network loading, thus, maintaining the measurement accuracy. *See* Specification, ¶¶ 0016-17.

It is respectfully submitted that Mimura neither teaches nor suggests combining measured data into an aggregation of characteristic values, wherein the aggregation has a lower volume than the measured data, and includes at least two of various enumerated parameters, nor associating the characteristic values with a time of the combining, as recited in amended independent claims 13 and 29. In contrast, Mimura merely sends measured performance metrics as part of a network communication flow, and detects relative times at which the observed IP packet flow begins and ends. *See* Mimura, column 7, lines 21-29 and 32-35. Further, it is respectfully submitted that Goel neither teaches nor suggests the above-recited features of independent claims 13 and 39. In contrast, Goel merely describes a path selection algorithm that uses mean and variance of switch delays. *See* Goel, column 11, lines 31-61. Accordingly, a combination of Mimura and Goel, to the extent proper, could not render independent claims 13 and 29, nor their respective dependent claims, obvious.

Reconsideration and withdrawal of the rejection of claims 13-15, 18-23 and 29-31 under 35 U.S.C. § 103(a) as being unpatentable based on a combination of Mimura and Goel is respectfully requested.

**CONCLUSION**

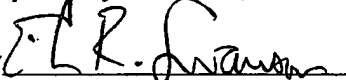
In view of the foregoing it is believed that remaining claims 13-15, 18-23 and 29-31 are in condition for allowance and it is respectfully requested that the application be reconsidered and that all pending claims be allowed and the case passed to issue.

If there are any other issues remaining which the Examiner believes could be resolved through a Supplemental Response or an Examiner's Amendment, the Examiner is respectfully requested to contact the undersigned at the telephone number indicated below.

The Commissioner is authorized to charge any deficiency, and credit any overpayment, associated with this filing to Deposit Account No. 04-0100.

Dated: December 30, 2008

Respectfully submitted,

By 

Erik R. Swanson

Registration No.: 40,833

DARBY & DARBY P.C.

P.O. Box 770

Church Street Station

New York, New York 10008-0770

(212) 527-7700

(212) 527-7701 (Fax)

Attorney For Applicant(s)